

State of California
California Regional Water Quality Control Board
Santa Ana Region

February 29, 2008

ITEM: 13*

SUBJECT: Order No. R8-2008-0039 Affirming Administrative Civil Liability
Complaint No. R8-2007-0021, WDID NO 8 36I 016177, L & H Mold
& Engineering (L & H), Ontario, San Bernardino County, California

BACKGROUND

On May 16, 2007, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2007-0021 (copy attached) to L & H, for alleged violations of the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). In the ACL, the Executive Officer proposed an assessment of \$5,000 for the alleged violations. L & H waived its right to a hearing and paid \$1,250 of the assessment but to date has not paid the balance. Adoption of Order No. R8-2008-0039 will affirm the \$5,000 assessment and facilitate collection of the balance of the assessment.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against L & H.

ACL No. R8-2007-0021 was issued by the Executive Officer to L & H for violations of the General Permit, including the failure of L & H to submit the 2005-2006 annual report by the July 3, 2006 deadline. On June 25, 2007, L & H waived its right to a hearing before the Board, paid \$1,250 and agreed to pay the balance of \$3,750 in three installments of \$1,250 each. L & H failed to pay any of the three installments by the due dates.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$830), with the State Water Resources Control Board. On October 31, 2000, L & H filed a NOI and obtained coverage under the General Permit, WDID No. 8 36I 016177.

The General Permit requires submittal of an annual report by July 1 of each year. L & H did not submit the annual report by the July 3, 2006 deadline (July 1, 2006 was a Saturday). A Notice of Non-Compliance (NNC) was issued to L & H by certified mail, on August 4, 2006. On August 10, 2006, Board staff received confirmation that the NNC was received at the facility (the return receipt was not dated but was signed by Brenda Bishop, the owner).

On September 8, 2006, Board staff spoke to Brenda Bishop and reminded her that the annual report was overdue, that a second NNC would be mailed soon, and that L & H should submit the annual report to avoid penalties. A second NNC was issued on September 11, 2006, again by certified mail. The facility received the NNC on September 13, 2006.

In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 3 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 11, 2006.

On November 8, 2006, L & H submitted an annual report. The facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 3, 2006.

L & H failed to submit the required annual report to the Regional Board office within 60 days from the date on which the original NNC was sent. Under those circumstances, California Water Code Section 13399.33(c) requires that an administrative civil penalty shall be imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000). In addition, Water Code Section 13385(c) provides that administrative civil liability may be imposed on any person who violates waste discharge requirements in an amount not to exceed \$10,000 per day of violation.

Based on non-submittal of the 2005-2006 annual report, the facility is alleged to have violated the General Permit for 128 days (from July 4, 2006 to November 7, 2006). The maximum liability for this violation is \$1,280,000. Section 13385(e) specifies factors the Board shall consider in establishing the amount of civil liability. A review of L & H's permit compliance history reveals that the facility had not developed and implemented a Storm Water Pollution Prevention Plan (SWPPP) during the last six years and had collected and analyzed storm water samples only during one reporting period (2002-2003). A detailed discussion of the factors under Section 13385(e) is included in Complaint No. R8-2007-0021 (attached). After consideration of those factors, including the history of violations, the Executive Officer proposed that civil liability be imposed on L & H in the amount of \$5,000.

On June 25, 2007, L & H waived its right to a hearing, paid \$1,250, and agreed to pay the balance in three installments of \$1,250 each. The installment due dates were July 2, July 9, and July 16, 2007. L & H failed to pay any of the three installments by the due dates.

On August 13, 2007, Board staff sent a letter to L & H requesting payment of the balance of \$3,750. On January 9, 2008, Board staff visited the facility and provided Ms. Bishop copies of the ACL, the signed Waiver of Hearing, the first installment payment of \$1,250, and the August 13, 2007 demand letter. Ms. Bishop indicated that the company was having financial difficulties. She also indicated that she should be able to pay the balance through cash infusion from a proposed structured downsizing of the company.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

Board staff recommends that the Board affirm the \$5,000 assessment specified in Administrative Civil Liability Complaint No. R8-2007-0021, issued by the Executive Officer on May 16, 2007 and direct staff to collect the unpaid balance of \$3,750 by adopting Order No. R8-2008-0039. L & H Mold & Engineering (L & H) has until March 31, 2008 to pay the balance.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2008-0039
)	for
L & H Mold & Engineering)	Administrative Civil Liability
2031 Del Rio Way)	
Ontario, CA 91761)	
)	
<u>Attention: Ms. Brenda Bishop</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board) held a hearing on February 29, 2008 and adopted Order No. R8-2008-000039 to affirm the penalty assessment contained in Complaint No. R8-2007-0021, dated May 16, 2007 and direct staff to collect the unpaid balance of the assessment. The Complaint was issued pursuant to California Water Code sections 13385 and 13399.33. The total assessed amount was \$5,000. The unpaid amount is \$3,750. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). L & H Mold & Engineering (L & H), located at 2240 E. Cedar Street in Ontario, is authorized to discharge storm water under the Permit, WDID 8 36I 016177. The General Permit requires submittal of an annual report by July 1 of each year.
2. The 2005-2006 annual report was not received from L & H by July 3, 2006 (July 1, 2006 was a Saturday). A Notice of Non-Compliance (NNC) was issued to L & H by certified mail, on August 4, 2006. Because the annual report was not received by the date specified in the NNC, a second NNC was issued on September 11, 2006, again by certified mail. In the second NNC, Board staff requested submittal of the annual report by October 11, 2006. L & H did not submit the annual report by October 11, 2006. On November 2, 3, and 6, 2006, L & H contacted Board staff and indicated that the annual report was being prepared by a consultant and would be submitted by November 8, 2006. On November 8, 2006, the annual report was submitted to the Board office.
3. On May 16, 2007, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2007-0021 to L & H proposing that the Board impose civil liability in the amount of \$5,000 on L & H for failure to submit the annual report by the due date (copy attached).

4. On June 25, 2007 L & H waived its right to a hearing before the Board, paid \$1,250 and agreed to pay the balance of the \$5,000 penalty in three installments of \$1,250 each. The agreed upon installment due dates were July, 2, July 9, and July 16, 2007. Despite various attempts by staff to contact the facility, L & H failed to pay any of the installments.
5. On August 13, 2007, staff sent a letter requesting payment of the remaining \$3,750.
6. On January 9, 2008, Board staff contacted Ms. Bishop (owner of L & H) and provided her copies of the ACL, signed Waiver of Hearing Form, first installment payment of \$1,250, and the August 13, 2007 demand letter for the balance due. Ms. Bishop indicated that she was having financial difficulties and that she should be able to pay the balance from the cash infusion during a structured downsizing of the company. As of the date of this order, L & H has not paid the balance due.
7. The facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 3, 2006.
8. Water Code Section 13399.33(c) requires the Board to assess a mandatory penalty of one thousand dollars (\$1,000) for failure to submit the annual report. Section 13385 allows the Board to assess additional penalties for violations of Waste Discharge Requirements. The Executive Officer issued Complaint No. R8-2007-0021. L & H waived its right to a hearing and agreed to pay the assessed penalty in four installments of \$1,250 each. L & H paid only one installment of \$1,250. This order is to facilitate collection of the balance of \$3,750.
9. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on L & H Mold & Engineering, in the amount of \$5,000 as proposed in Complaint No. R8-2007-0021 for the violations cited. The unpaid balance of \$3,750 is payable as set forth below.

1. L & H Mold & Engineering shall pay \$3,750 to the State Water Resources Control Board by March 31, 2008.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on February 29, 2008.

Gerard J. Thibeault
Executive Officer

Tentative

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
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<u>Attention: Ms. Brenda Bishop</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose an administrative civil liability under Sections 13385 and 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter has been scheduled for the Board's regular meeting on June 29, 2007 at the City Council Chambers of Loma Linda, 25541 Barton Road, Loma Linda, CA 92354. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. The staff report pertaining to this item and the agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed penalty or to refer the matter to the Attorney General for recovery of judicial civil liability.
4. L & H Mold & Engineering (L & H), located at 2240 E. Cedar Street in Ontario, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WQID Number is 8 361 016177. The General Permit requires submittal of an annual report by July 1 of each year.
5. The 2005-2006 annual report, which was due on July 3, 2006, as July 1 was a Saturday, was not received from L & H. A Notice of Non-Compliance (NNC) was issued to L & H by certified mail, on August 4, 2006. On August 10, 2006, Board staff received confirmation that the NNC was received at the facility (the return receipt was not dated but was signed by Brenda Bishop).

6. On September 8, 2006, Board staff spoke to Brenda Bishop and reminded her that the annual report was overdue. A second NNC was issued on September 11, 2006, again by certified mail. The return receipt indicated that Brenda Bishop signed for the NNC on September 12, 2006.
7. In both NNCs, Board staff requested submittal of the annual report, a statement explaining why the annual report was not submitted by the deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the annual report by October 11, 2006.
8. On November 2, 3, and 6, 2006, Brenda Bishop contacted Board staff and indicated that the annual report was being prepared by a consultant and would be submitted by November 8, 2006.
9. On November 8, 2006, the annual report was submitted to the Board office. The facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 3, 2006.
10. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
11. Based on non-submittal of the 2005-2006 annual report, the facility is alleged to have violated the General Permit for 128 days (from July 4, 2006 to November 7, 2006). The maximum liability for this violation is \$1,280,000.
12. Section 13399.33(c) of the California Water Code provides that the Regional Board shall impose a minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
13. Section 13385(e) of the California Water Code specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed in the table below:

Factor	Comment
A. Nature, Circumstance, Extent, and Gravity of Violation	L & H did not submit its annual report in a timely manner. L & H got coverage under the General Permit on October 31, 2000. During 2000-01, the facility did not develop and implement a SWPPP and did not collect any storm water samples. The annual report for 2000-01 indicated that the facility would come into full compliance with the Permit during the 2001-02 reporting period. After six years, the facility still has not developed or implemented a SWPPP, and during the last six years, the facility collected and analyzed storm water samples only during one reporting period (2002-03).
B. Culpability	L & H failed to submit its annual report as required by the General Permit. L & H received two certified letters and a number of phone calls reminding it that the annual report was overdue and warning it of the consequences. The facility has been in violation of the Permit for the last six years with respect to the requirement to develop and implement a SWPPP and is still not in compliance with some of the other provisions of the General Permit.
C. Economic Benefit or Savings	Staff estimates that L & H saved approximately \$1,000 during the 2005-2006 reporting year by not collecting and analyzing storm water samples; its savings on delaying the submittal of the annual report itself is negligible.
D. Prior History of Violations	During each of the last six reporting years, the facility has indicated that it is in the process of developing and implementing a SWPPP, but has not yet done so. Therefore the facility has been in violation of the Permit during each of the last six years.
E. Other Factors	Board staff spent at least 3 hours of staff time in its efforts to bring this facility into compliance with respect to submittal of the annual report (@\$70.00 per hour, the total cost for staff time is \$210).
F. Ability to pay	L & H has not provided any information to indicate that it is unable to pay the proposed assessment.

After consideration of these factors, the Executive Officer proposes that civil liability be imposed on L & H in the amount of \$5,000 for the violations cited above. This amount includes \$4,000 as administrative civil liability under Section 13385 and \$1,000 as mandatory minimum penalty under Section 13399.33.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check payable to the State Water Resources Control Board, for the amount of \$5,000. The waiver form and the check should be mailed to this office in the enclosed pre-printed envelope.

If you have any questions, please contact Nam K. Nguyen at 951-321-4582, or contact the Board's legal counsel, Erik Spiess, at (916) 341-5167.

May 16, 2007
Date



Gerard J. Thibeault
Executive Officer

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WAIVER OF HEARING

I agree to waive the right of L & H Mold & Engineering to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2007-0021.

I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$5,000. I understand that I am giving up the right of L & H Mold & Engineering to be heard and to argue against allegations made by the Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for L & H Mold & Engineering